APPENDIX
PORTIONS OF TRUSTEE'S MOTION FOR ALLOWANCE OF CLAIM
Filed December 27, 1961
(II 23-26)

4. The trustee filed perfunctory objections to the Merrill-Stevens claim and all objections to claims were referred by court order dated January 13, 1959, to L. Earl Curry, Referee in Bankruptcy as Special Master. At the master's hearing on February 3, 1959, the only action with respect to the Merrill-Stevens claim was announcement by counsel for the trustee that the claim had been "accepted and settled out of court." That satement had reference to a decision by the trustee that the claim should be allowed in the amounts set forth in paragraph 3 above, following an examination of the debtor's records which indicated that work had been performed on the vessels as indicated in the claim, that no payments had been made thereon other than those reflected in the figures shown, and that no defenses to the claim were apparent. The master's report filed June 18, 1959 reported only that the claim had been "Settled." No exceptions were filed to said master's report with respect to the Merrill-Stevens claim.

5. The trustee filed on January 16, 1961 his PETITION FOR APPOINMENT OF SPECIAL MASTER for the purpose of marshalling all lien claims against the vessels, establishing priorities, and considering objections that had been filed to certain of the lien claims. That Petition contained the statement that the Merrill-Stevens claim along with several others had been the subject of informal settlement understanding between the trustee and the claimants as to the amounts of the claims. The Securities and Exchange Commission filed a response to the said Petition of the trustee in which it was stated that the

Merrill-Stevens claim should be disallowed because the trustee had not conducted a sufficient investigation of the claim, and on information and belief that a partial payment had been made on the claim by issuance of common stock of the debtor, that the claim was excessive and that the services represented by the claim were not satisfactory. At the hearing held January 27, 1961 on the said trustee's Petition, the court allowed the Securities and Exchange Commission time within which to file detailed specifications of its objections and allowed the claimant Merrill-Stevens time within which to file a reply to such specifications. The court's ORDER APPOINTING SPECIAL MASTER dated February 6, 1961 required a determination of the liens and their respective priorities that should be allowed against the ships of the debtor, but made no specific reference to any objections to the Merrill-Stevens claim. The Special Master, E. A. Bosarge, has conducted no formal hearings on these issues and there has not been presented to him for consideration, any matters involving objections to the Merrill-Stevens claim.

6. Thereafter the Securities and Exchange Commission conducted an investigation of the Merrill-Stevens claim and specifications in support of its objections to the claim were filed herein on August 3, 1961, and thereafter Merrill-Stevens filed on September 1, 1961, its answer to such specifications.

7. Thereafter the trustee, with the assistance of attorneys in the office of his counsel, investigated the facts alleged in the specifications of objections filed by the SEC and in the answer of Merrill-Stevens. This investigation consisted of an examination of numerous documents assembled by the SEC during its investigation, together with copies of statements made by individuals

which had been obtained during the investigation. Also examined were numerous documents and statements furnished by Merrill-Stevens in support of its answer to the specifications of objections by the SEC.

8. Efforts have been made by the Trustee to effect a compromise with Merrill-Stevens of the amount of its claim in view of the objections filed against it, but Merrill-Stevens has refused to make any compromise and insists that its claim be allowed in full. It is the opinion of the Trustee and of his undersigned counsel that further effort to compromise or settle this claim will not be successful.

9. Two attorneys in the office of counsel for the trustee have examined the factual data gathered in the trustee's investigation of the objections to the Merrill-Stevens claim and it is the considered opinion of both attorneys that the possibility is remote of obtaining any reduction, or material reduction, in the amount of the Merrill-Stevens claim by litigating the objections filed against it. Trial of the issues raised by the objections would be time consuming and would result in unnecessary delay in formulating a plan or (sic) reorganization. It is the opinion of the trustee and his undersigned counsel that the Merrill-Stevens claim should be allowed in the amounts specified in paragraph three (3) above and that the pending proceedings before the Special Master, E. A. Bosarge, for the marshalling of the liens against the vessels should be limited to a determination, insofar as the Merrill-Stevens claim is concerned, of the relative rank and priority of that claim with the other claims filed against the vessels named.

WHEREFORE the trustee prays for the entry of an Order allowing the claim of Merrill-Stevens in the amounts specified in paragraph three (3) above.